IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.808 OF 1998
FROM
WRIT PETITION NO.394 OF 1998

The Brihan Mumbai Mahanagar
Palika, constituted under
the Mumbai Municipal
Corporation Act, 1888
through its General Manager,
The Brihan Mumbai Electric
Supply and Transport
Undertaking, BEST Bhavan,
BEST Marg, Colaba,
Mumbai-400 039. .... Appellant

- Versus -

1. Piraji C. Khabale
   having his address at
   C/o BEST Workers' Union,
   42, Kennedy Bridge,
   Mumbai-400 004.

2. The General Secretary,
   BEST Workers' Union,
   42, Kennedy Bridge,
   Mumbai-400 004.

3. Shri V.E. Potdar,
   Presiding Officer,
   5th Labour Court, having
   his Court and Office
   at Arun Chambers,
   Tardeo, Mumbai-400 034.

4. Shri G.R. Baviskar,
   Member, Industrial Court,
   Maharashtra at Mumbai,
   having his Court and
   Office at Arun Chambers,
   Tardeo, Mumbai-400 034. .... Respondents

Mr. S.K. Talsania, Senior Counsel, with
Mr. J.S. Saluja, Advocate i/b M/s. M.V. Kini
& Co. for the Appellant.

None for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
Dr. D.Y. CHANDRACHUD, JJ.

DATED: JANUARY 10, 2007

ORAL JUDGMENT (Per Dr. D.Y.Chandrachud, J.):

1. The first Respondent was employed as a Bus Driver with the Appellant-Undertaking on 3rd September, 1978. On 5th March, 1986, the first Respondent was assigned plying a bus on route 337. The bus driven by the first Respondent was proceeding from Sahar Cargo Complex towards Ghatkopar-Vikhroli along the Saki-Vihar Road. At about 11:50 a.m., when the bus reached at a spot which is described as Chopra Garage, Tunga Village, the first Respondent allegedly lost control of the bus. The bus crossed across the central road divider, travelled across to the other side of the road and met with a head-on collision with another bus coming from the opposite direction. In the course of the accident, 37 persons sustained injuries and both the buses were extensively damaged. Nine out of the 37 persons, including the first Respondent, sustained severe injuries and were required to be hospitalised.

2. A chargesheet was issued to the first Respondent by which disciplinary proceedings came to be convened on the allegation that the workman had committed a

misconduct under Standing Order 20(j) of the Certified Standing Orders. An enquiry was thereupon conducted in which the first Respondent was represented by a Union representative. During the course of the enquiry, the Management examined several witnesses, including amongst them, some of the injured passengers. The defence of the first Respondent was that while he was driving the bus, he noticed a young boy crossing in front of the bus all of a sudden and that while trying to save the pedestrian, he had applied the brakes. The contention of the first Respondent was that in the process, the bus swerved towards the right, the steering wheel broke and the brakes failed as a result of which the bus mounted upon the central road divider and dashed a bus coming from the opposite direction.

3. The Enquiry Officer came to the conclusion that the accident had taken place on account of rash and negligent driving by the first Respondent. The past record of the first Respondent, upon scrutiny, was found not to be satisfactory. After the disciplinary proceedings were concluded, the first respondent was dismissed from service on 10th January, 1987. The departmental appeals filed by the first Respondent were dismissed. Thereupon the first Respondent moved the Labour Court in an application under the Bombay Industrial Relations Act, 1946.

4. By an order dated 30th November, 1993 the Labour Court came to the conclusion that the enquiry held against the first Respondent was fair and proper and that the findings of the Trying Officer were not perverse. The defence of the workman that the accident was caused due to a young boy suddenly darting across the road has not been believed. Despite the aforesaid findings, the Labour Court passed an order of reinstatement, without back wages but with continuity of service. The Undertaking carried the matter in Appeal. The Appeal was dismissed by the Industrial Court on 22nd July, 1997. The learned single Judge who was moved in a Petition under Article 226 of the Constitution of India held by his order dated 9th March, 1998 that both the Courts had, on the basis of material, come to the conclusion that the punishment that was imposed was disproportionate. The learned single Judge was of the view that nothing has been pointed out to show that the findings in regard to the past service record were perverse. The Petition was accordingly dismissed. The Respondent has been served but has not appeared.

5. In assailing the findings of the Labour Court and the Industrial Court, as confirmed in the order of the learned Single Judge, Counsel appearing on behalf of the Appellant submitted that this is a case where an

accident had taken place on account of a serious misconduct on the part of the employee involving an act of rash and negligent driving. Thirty seven passengers had been injured in the course of the accident. It was submitted that in a case involving serious misconduct of the nature involved in the present case, the Undertaking was justified in imposing the penalty of dismissal and the reasons that weighed with the Labour Court as well as with the Industrial Court in holding that the punishment was disproportionate are ex facie perverse. Moreover, it was submitted that the past record of the workman was not, as a matter of fact, free from blemish and that on several occasions in the past, punishments had been imposed for breach of duties.

6. Both the Labour Court and the Industrial Court have found that the enquiry was fair and proper and that the misconduct has been proved. The defence of the workman has not been accepted. It needs to be emphasised that the nature of the misconduct in the present case is of a grave and serious nature. The first Respondent was a Driver employed by the BEST Undertaking and in the course of the discharge of his duties, he was involved in an act of rash and negligent driving. The accident was of a serious nature, in the course of which 37 passengers, including the first Respondent were injured. As a result of the accident, the bus which was driven by

the first Respondent swerved across the central road divider and met with a head-on collision with a bus coming from the opposite direction. The defence of the workman that the accident was caused as a result of a young boy suddenly darting across the road has been disbelieved. Despite the aforesaid factual position, the Labour Court held that if the facts and circumstances relating to the occurrence of the accident, the situation of the road, the huge traffic and the time of the accident were to be considered, it could not be held that the act of misconduct was so serious or grave as to impose the penalty of dismissal. The approach of the Labour Court is, in our view, clearly unsustainable. Having held that the misconduct was duly established in the course of the disciplinary proceedings, the Labour Court transgressed its jurisdiction in proceeding to hold that the nature of the misconduct was not serious. It is impossible to accept the finding of the Labour Court that the misconduct in the present case was not serious. Even a bare recital of the facts is sufficient to demonstrate that a serious accident had resulted owing to the rash and negligent act of the first Respondent. The Labour Court, in so far as the past record of the first Respondent is concerned, noted that during the tenure of his service, there were six blameworthy entries in the service record. In the Petition which has been filed

before this Court, the Undertaking has averred in paragraph 3 that during the tenure of his eight years of service, the first Respondent was involved in eighteen minor accidents, out of which six were blameworthy. In two cases, the first Respondent was censured. On 26th November, 1979 the first Respondent was censured for not stopping his bus. Again on 3rd September, 1980 he was suspended for one day. Another order of censure was passed on 19th December, 1983. The past record, therefore, cannot by any means be regarded as without blemish. The Industrial Court, in exercise of its appellate jurisdiction, affirmed the order of the Labour Court holding that despite the accident the life of the boy was saved. The Industrial Court also held that no major and fatal accident had been reported against the first Respondent and if the order of dismissal was to be upheld, it would lead to the deprival of an opportunity to improve being given to the employee. It was on this ground alone that a lenient view was considered to be appropriate by the Industrial Court. The reasons which weighed with the Industrial Court are also completely specious. The fact that there was no major and fatal accident reported against the first Respondent is clearly not a relevant consideration when the accident in question was of a serious nature. The fact that a fatality had not resulted cannot be regarded as a circumstance which would render the imposition of the

punishment of dismissal disproportionate, particularly where as many as 37 passengers were injured as a result of the accident. A fortuitous circumstance that a serious fatality was not caused cannot be a ground to interfere with the exercise of the disciplinary jurisdiction by the employer.

7. Public transport undertakings discharge a public function - providing transportation services to commuters. The safety of their operation is a matter of public interest to those who travel in buses and to those who use the roads on which the buses ply. The lives of ordinary commuters are endangered by the negligence of the drivers in discharging their duties safely. Labour and Industrial Courts cannot be oblivious to the welfare and interest of the wider community and the impact of an act of misconduct cannot be considered in isolation as if it is a matter confined to the employer and employee. Once misconduct is proved, non-interference in the disciplinary jurisdiction should be the norm and interference an exception. We are of the view that the grounds which weighed with the Labour Court and the Industrial Court in interfering with the punishment imposed by the disciplinary authority were unsustainable. The learned single Judge was, in these circumstances, not justified in declining to accede to the plea of the

Appellant-Undertaking. The learned Judge is in error even on the issue of the past service record.

8. In the circumstances, the Appeal shall have to be allowed and is accordingly allowed. The impugned order of the learned single Judge, dated 9th March, 1998, is quashed and set aside. The Petition filed by the Management shall stand allowed and rule in the Petition is made absolute in terms of prayer (a). The Appeal is accordingly disposed of. There shall be no order as to costs.

(Dr.D.Y.Chandrachud, J.) (R.M.S.Khandeparkar, J.)

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